

REQUIREMENT FOR GUARANTEE OF
PERFORMANCE (DEC 2000)

The successful offeror is required by other provisions of this solicitation to organize a dedicated corporate entity to carry out the work under the contract to be awarded as a result of this solicitation. The successful offeror will be required, as part of the determination of responsibility of the newly organized, dedicated corporate entity and as a condition of the award of the contract to that entity, to furnish a guarantee of that entity's performance. That guarantee of performance must be satisfactory in all respects to the Department of Energy.

(End of clause)

970.5215-1 Total available fee: Base fee amount and performance fee amount.

As prescribed in 48 CFR 970.1504-5(a), insert the following clause. The clause should be tailored to reflect the contract's actual inclusion of base fee amount and performance fee amount.

TOTAL AVAILABLE FEE: BASE FEE AMOUNT
AND PERFORMANCE FEE AMOUNT (DEC 2000)

(a) *Total available fee.* Total available fee, consisting of a base fee amount (which may be zero) and a performance fee amount (consisting of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both) determined in accordance with the provisions of this clause, is available for payment in accordance with the clause of this contract entitled, "Payments and advances."

(b) *Fee Negotiations.* Prior to the beginning of each fiscal year under this contract, or other appropriate period as mutually agreed upon and, if exceeding one year, approved by the Senior Procurement Executive, or designee, the contracting officer and Contractor shall enter into negotiation of the requirements for the year or appropriate period, including the evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. The contracting officer shall modify this contract at the conclusion of each negotiation to reflect the negotiated requirements, evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. In the event the parties fail to agree on the requirements, the evaluation areas and individual requirements subject to incentives, the total available fee, or the allocation of fee, a unilateral determination will be made by the contracting officer. The total available fee amount shall be allocated to a twelve month cycle composed of one or more evaluation

periods, or such longer period as may be mutually agreed to between the parties and approved by the Senior Procurement Executive, or designee.

(c) *Determination of Total Available Fee Amount Earned.* (1) The Government shall, at the conclusion of each specified evaluation period, evaluate the contractor's performance of all requirements, including performance based incentives completed during the period, and determine the total available fee amount earned. At the contracting officer's discretion, evaluation of incentivized performance may occur at the scheduled completion of specific incentivized requirements.

(2) The DOE Operations/Field Office Manager, or designee, will be (insert title of DOE Operations/Field Office Manager, or designee). The contractor agrees that the determination as to the total available fee earned is a unilateral determination made by the DOE Operations/Field Office Manager, or designee.

(3) The evaluation of contractor performance shall be in accordance with the Performance Evaluation and Measurement Plan(s) described in subparagraph (d) of this clause unless otherwise set forth in the contract. The Contractor shall be promptly advised in writing of the fee determination, and the basis of the fee determination. In the event that the contractor's performance is considered to be less than the level of performance set forth in the Statement of Work, as amended to include the current Work Authorization Directive or similar document, for any contract requirement, it will be considered by the DOE Operations/Field Office Manager, or designee, who may at his/her discretion adjust the fee determination to reflect such performance. Any such adjustment shall be in accordance with the clause entitled, "Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts" if contained in the contract.

(d) *Performance Evaluation and Measurement Plan(s).* To the extent not set forth elsewhere in the contract:

(1) The Government shall establish a Performance Evaluation and Measurement Plan(s) upon which the determination of the total available fee amount earned shall be based. The Performance Evaluation and Measurement Plan(s) will address all of the requirements of contract performance specified in the contract directly or by reference. A copy of the Performance Evaluation and Measurement Plan(s) shall be provided to the Contractor:

(i) prior to the start of an evaluation period if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been mutually agreed to by the parties; or

(ii) not later than thirty days prior to the scheduled start date of the evaluation period, if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been unilaterally established by the contracting officer.

(2) The Performance Evaluation and Measurement Plan(s) will set forth the criteria upon which the Contractor will be evaluated relating to any technical, schedule, management, and/or cost objectives selected for evaluation. Such criteria should be objective, but may also include subjective criteria. The Plan(s) shall also set forth the method by which the total available fee amount will be allocated and the amount earned determined.

(3) The Performance Evaluation and Measurement Plan(s) may, consistent with the contract statement of work, be revised during the period of performance. The contracting officer shall notify the contractor:

(i) of such unilateral changes at least ninety calendar days prior to the end of the affected evaluation period and at least thirty calendar days prior to the effective date of the change;

(ii) of such bilateral changes at least sixty calendar days prior to the end of the affected evaluation period; or

(iii) if such change, whether unilateral or bilateral, is urgent and high priority, at least thirty calendar days prior to the end of the evaluation period.

(e) *Schedule for total available fee amount earned determinations.* The DOE Operations/Field Office Manager, or designee, shall issue the final total available fee amount earned determination in accordance with: the schedule set forth in the Performance Evaluation and Measurement Plan(s); or as otherwise set forth in this contract. However, a determination must be made within sixty calendar days after the receipt by the contracting officer of the Contractor's self-assessment, if one is required or permitted by paragraph (f) of this clause, or seventy calendar days after the end of the evaluation period, whichever is later, or a longer period if the Contractor and contracting officer agree. If the contracting officer evaluates the Contractor's performance of specific requirements on their completion, the payment of any earned fee amount must be made within seventy calendar days (or such other time period as mutually agreed to between the contracting officer and the Contractor) after such completion. If the determination is delayed beyond that date, the Contractor shall be entitled to interest on the determined total available fee amount earned at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date. This rate is referred to as the "Renegoti-

ation Board Interest Rate," and is published in the FEDERAL REGISTER semiannually on or about January 1 and July 1. The interest on any late total available fee amount earned determination will accrue daily and be compounded in 30-day increments inclusive from the first day after the schedule determination date through the actual date the determination is issued. That is, interest accrued at the end of any 30-day period will be added to the determined amount of fee earned and be subject to interest if not paid in the succeeding 30-day period.

(End of clause)

Alternate I (DEC 2000). As prescribed in 48 CFR 970.1504-5(a)(1), when the award fee cycle consists of two or more evaluation periods, add the following to paragraph (c):

(4) At the sole discretion of the Government, unearned total available fee amounts may be carried over from one evaluation period to the next, so long as the periods are within the same award fee cycle.

Alternate II (DEC 2000). As prescribed in 48 CFR 970.1504-5(a)(2), when the award fee cycle consists of one evaluation period, add the following to paragraph (c):

(4) Award fee not earned during the evaluation period shall not be allocated to future evaluation periods.

Alternate III (DEC 2000). As prescribed in 48 CFR 970.1504-5(a)(3), when the DOE Operations/Field Office Manager, or designee, requires the contractor to submit a self-assessment, add the following as paragraph (f):

(f) *Contractor self-assessment.* Following each evaluation period, the Contractor shall submit a self-assessment within (*Insert Number*) calendar days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The DOE Operations/Field Office Manager, or designee, will review the Contractor's self-assessment, if submitted, as part of its independent evaluation of the contractor's management during the period. A self-assessment, in and of itself may not be the only basis for the award fee determination.

Alternate IV (DEC 2000). As prescribed in 48 CFR 970.1504-5(a)(4), when the DOE Operations/Field Office Manager, or designee, permits the contractor to

submit a self-assessment at the contractor's option, add the following text as paragraph (f):

(f) *Contractor self-assessment.* Following each evaluation period, the Contractor may submit a self-assessment, provided such assessment is submitted within *(Insert Number)* calendar days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The DOE Operations/Field Office Manager, or designee, will review the Contractor's self-assessment, if submitted, as part of its independent evaluation of the Contractor's management during the period. A self-assessment, in and of itself may not be the only basis for the award fee determination.

[65 FR 81009, Dec. 22, 2000, as amended at 68 FR 68782, Dec. 10, 2003]

970.5215-2 Make-or-buy plan.

As prescribed in 48 CFR 970.1504-5(b), insert the following clause:

MAKE-OR-BUY PLAN (DEC 2000)

(a) Definitions.

Buy item means a work activity, supply, or service to be produced or performed by an outside source, including a subcontractor or an affiliate, subsidiary, or division of the contractor.

Make item means a work activity, supply, or service to be produced or performed by the contractor using its personnel and other resources at the Department of Energy facility or site.

Make-or-buy plan means a contractor's written program for the contract that identifies work efforts or requirements that either are "make items" or "buy items."

(b) *Make-or-buy plan.* The contractor shall develop and implement a make-or-buy plan that establishes a preference for providing supplies and services on a least-cost basis, subject to any specific make or buy criteria identified in the contract or otherwise provided by the contracting officer. In developing and implementing its make-or-buy plan, the contractor agrees to assess subcontracting opportunities and implement subcontracting decisions in accordance with the following:

(1) The contractor shall conduct internal productivity improvement and cost-reduction programs so that in-house performance options can be made more efficient and cost-effective.

(2) The contractor shall consider subcontracting opportunities with the maximum

practicable regard for open communications with potentially affected employees and their representatives. Similarly, a contractor shall communicate its plans, activities, cost-benefit analyses, and decisions to those stakeholders, including representatives of the community and local businesses, likely to be affected by such actions.

(c) *Submission and approval.* For new contract awards, the contractor shall submit an initial make-or-buy plan, for approval, within 180 days after contract award. If the existing contract is to be extended, the contractor shall submit a make-or-buy plan for review and approval at least 90 days prior to the commencement of the negotiations for the extension. The following documentation shall be prepared and submitted:

(1) A description of the each work item, and if appropriate, the identification of the associated Work Authorization or Work Breakdown Structure element;

(2) The categorization of each work item as "must make," "must buy," or "can make or buy," with the reasons for such categorization in consideration of the program specific make or buy criteria (including least cost considerations). For non-core capabilities categorized as "must make," a cost/benefit analysis must be performed for each item if:

(i) The contractor is not the least-cost performer, and

(ii) A program specific make-or-buy criterion does not otherwise justify a "must make" categorization;

(3) A decision to either "make" or "buy" in consideration of the program specific make or buy criteria (including least cost considerations) for work effort categorized as "can make or buy";

(4) Identification of potential suppliers and subcontractors, if known, and their location and size status;

(5) A recommendation to defer a make or buy decision where categorization of an identifiable work effort is impracticable at the time of initial development of the plan and a schedule for future re-evaluation;

(6) A description of the impact of a change in current practice of making or buying on the existing work force; and

(7) Any additional information appropriate to support and explain the plan.

(d) *Conduct of operations.* Once a make-or-buy plan is approved, the contractor shall perform in accordance with the plan.

(e) *Changes to the make-or-buy plan.* The make-or-buy plan established in accordance with paragraph (b) of this clause shall remain in effect for the term of the contract, unless:

(1) A lesser period is provided either for the total plan or for individual items or work effort;

(2) The circumstances supporting the make-or-buy decisions change, or

(3) New work is identified.